

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning of Video Programming)	CG Docket No. 05-231
)	
Telecommunications for the Deaf, Inc.)	
Petition for Rulemaking)	

COMMENTS OF HUBBARD BROADCASTING, INC.

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I. Introduction and Summary

Hubbard Broadcasting, Inc. ("HBI"), by its attorneys, submits these Comments in response to the Commission's *Notice of Proposed Rule Making*, FCC 05-142 (rel. July 21, 2005) ("NPRM").¹ HBI is the parent company of the licensees of thirteen television stations, serving communities varying in size from the large Minneapolis-St. Paul, Minnesota market (DMA 15) to small markets such as Duluth, Minnesota (DMA 136) and Rochester, Minnesota-Mason City, Iowa-Austin, Minnesota (DMA 152).² With more than fifty years experience in television broadcasting, HBI offers these Comments to assist the Commission in striking a balance between service to the hearing impaired and sustaining high quality local service to all viewers in smaller markets.

HBI is sympathetic to the interests expressed by Telecommunications for the Deaf, Inc. ("TDI") in its Petition.³ However, as shown in these Comments, the costs and burdens of

¹ Pursuant to the *Order* released on July 21, 2004 in this proceeding, these Comments are timely filed. See *Closed Captioning of Video Programming, Notice of Proposed Rulemaking*, CG Docket No., 05-231 (rel. July 21, 2004) ("Captioning Order").

² HBI licensees operate WDIO-TV, Duluth, Minnesota and KAAL(TV), Austin, Minnesota.

³ See *Telecommunications for the Deaf Inc., et al.* Petition for Rulemaking, RM-11065 (July 23, 2004) ("TDI Petition").

accommodating TDI's demands are in some respects technically impossible and otherwise so expensive as to substantially undermine the ability of smaller market television stations to produce news and other local programming or to cover local sports and charity events. Destroying the economic ability of small market television stations to serve their communities with local programming would harm hearing impaired and all other viewers.

As demonstrated here, TDI's suggestions would dramatically increase captioning costs and regulatory liabilities to the point of being prohibitive for all but the most lucrative stations. For example, HBI estimates that captioning requirements for locally produced news and other programming for KAAL would cost more than \$146,000 per year. HBI estimates that the proposed captioning requirements for WDIO-TV would exceed \$178,000 per year. Such expenditures would produce no new programming and those estimates are conservative. They exclude the captioning costs that would be associated with extended and emergency news coverage which are inevitable. Nor do those estimates include the considerable costs of proposed reporting requirements and new liabilities that would greatly increase the direct burdens of TDI's proposals.⁴

While adopting TDI's demands likely would drive smaller market stations away from local programming, there would be virtually no gains in service to the hearing impaired or to any other viewers. As shown in these Comments, current technology cannot achieve the goals sought by TDI. Even if improved captioning technologies become available in the future, improvements to hearing impaired viewers would be of marginal value, at best.

The public interest requires the Commission to consider the entire television industry and not myopically view the TDI proposals in isolation. For example, all television broadcasters are

⁴ The declarations of the general managers of KAAL and WDIO-TV are attached to these Comments in support of the financial information provided.

participating in the historic conversion to digital television operations, a process that has been underway for approximately eight years and is likely to continue for at least another three years.⁵ HBI estimates that the costs of digital conversion for WDIO-TV and for KAAL will exceed \$3.5 million and \$2 million, respectively. Stations that are struggling to meet such obligations should not be burdened with new and substantially useless additional costs.

To prevent drastic harm to television stations in mid to small markets (DMA's 50 and above), HBI recommends the following to the Commission:

1. Continue the use of Electronic Newsroom Technique ("ENT") captioning with the present full captioning obligations for larger markets.⁶
2. Retain the discrete captioning exemptions listed under Section 79.1 of the federal regulations. In particular, the local production, 2% gross revenue floor and low-revenue station rules protect broadcast localism.⁷
3. Refrain from imposing additional technical, quality, or monitoring standards on broadcasters.⁸ Regulations beyond the Commission's 'pass through' rules⁹ are unnecessary as they pertain to broadcasters. The majority of captioning errors occur due to programming provider actions.

⁵ It is likely that a final DTV transition date will occur in early 2009. *See 2006 Budget Reconciliation Bill* HR. 4241 (designates a hard DTV transition date of January 1, 2009); *see also Digital Transition and Public Safety Act of 2005*, S. ___ (recently passed Senate Committee Markup in the Commerce, Science and Transportation Committee on Oct. 20, 2005. The Senator Stevens sponsored legislation proposes a hard DTV transition date of April 9, 2009.)

⁶ *Captioning Order* at ¶¶44-48. (The ENT process develops captioning text directly from the teleprompter, unscripted news portions are not captioned. ENT is an ideal means for small and mid market stations to save the hefty costs of stenographers. Pursuant to the Commission's rules, 47 C.F.R. § 79.1(e)(3), affiliates of ABC, CBS, Fox and NBC in the top 25 Nielsen Designated Market Area stations may not use ENT. Further, national non-broadcast networks serving at least 50% of all homes subscribing to multichannel video programming services may not use ENT.)

⁷ 47 C.F.R. §79.1(d)(8), (11) & (12).

⁸ *See Captioning Order* at ¶¶ 10-25.

⁹ *See Captioning Order* at ¶ 55 ("Section 79.1(c) requires distributors to deliver all programming they receive that contains closed captioning to consumers with the captions intact." It also requires "distributors to ensure that their equipment is working properly[.]"); *see also* 47 C.F.R. § 79.1(c).

4. The Commission should require that programming producers adhere to closed captioning compliance.

II. Discussion

A. The Costs of New Captioning Requirements Threaten Local Programming

Provision of local service is a cornerstone of broadcasting. The Commission's recent Localism Notice of Inquiry ("NOI") stated the concern that some broadcasters may not adequately serve their communities of license.¹⁰ In fact, the Localism NOI reported that 35% of television stations provide no local news, and 25% provide neither local news nor local public affairs programming.¹¹ Not so at HBI stations, where local news and public interest programming are an integral part of the service. For example, WDIO-TV routinely televises local high school and college ice hockey games, the Kiwanis Auction and the MDA Telethon. KAAL broadcasts both a local one hour religious show and a local half hour high school news show, weekly. Unfortunately, stations such as WDIO-TV and KAAL that have long-standing commitments to locally produced programming would suffer the most harm from onerous new closed captioning obligations while less committed stations would not.

TDI's Petition proposed two substantial new direct costs of captioning. First, all locally produced live programming would be subject to live captioning obligations.¹² TDI's proposal would affect local sports, charity events, interviews and unscripted parts of news coverage, none of which currently must be captioned by smaller market stations.¹³ Typically, KAAL broadcasts 897 hours per year of regularly scheduled, locally produced news programming, which would

¹⁰ *Broadcast Localism*, Notice of Inquiry, FCC 04-129 (rel. July 1, 2004) at ¶¶ 5-6 ("Localism NOI").

¹¹ *Localism NOI* at ¶13.

¹² *TDI Petition* at p. 34.

¹³ 47 C.F.R. 79.1(e)(3).

incur an estimated captioning cost of \$134,550.¹⁴ KAAL also broadcasts another 78 hours per year of regularly scheduled, locally produced non-news programming, which would incur an estimated cost of \$11,700. Together, KAAL would face \$146,250 in new captioning expenses for its regularly scheduled local programming, which would not include the additional costs of extended or emergency coverage of special events, severe weather and other emergencies.

The Commission must recognize the magnitude of these costs. In KAAL's relatively small market, television news reporters typically earn an annual salary of \$22,000 to \$28,000. Approximately \$150,000 represents the annual salaries of some six news reporters. KAAL currently employs twelve news reporters on a full time equivalent basis, so the financial burden of the proposed new captioning requirement would be staggering.

WDIO-TV, broadcasts 1,118 hours per year of regularly scheduled, locally produced news programming and 71 hours per year of regularly scheduled, locally produced non-news programming. The TDI captioning requirements would cost WDIO-TV \$167,700 for the news, and \$10,650 for the non-news programming. This increased annual cost of \$178,350 represents more than 15% of the annual WDIO-TV news budget or the equivalent of seven full time news reporter's salaries.

Much of the burden that TDI has asked the Commission to impose would be due to the elimination of electronic newsroom technique ("ENT") captioning¹⁵ as a substitute for live captioning. As noted above, requiring this proposed obligation would cost KAAL and WDIO-TV \$134,550 and \$167,700, respectively, in new captioning cost burdens for the production of

¹⁴ See Exhibit B, attached hereto (Captioning rates average between \$115-260 per hour. For these estimates, HBI has assumed a live captioning rate of \$150.00 per hour).

¹⁵ *TDI Petition* at 34; see also note 6, *supra* (currently, only television stations owned and operated by the major networks, or their affiliates in the largest 25 markets, are prohibited from using ENT for captioning. 47 C.F.R. 79.1(e)(3))

local news. None of those costs would provide for a single moment of new programming for the stations' viewers.

Clearly, the TDI demands would jeopardize the feasibility of news and other local programming. A study commissioned by the National Association of Broadcasters ("NAB") concluded that a small market television station could increase profits 30% by running syndicated programming instead of local news.¹⁶ Factoring in an additional \$134,550, to the captioning expenses described in the above NAB study, smaller market stations likely could increase their profits by more than 55 % by substituting syndicated programming for all local programming. Obviously, TDI's proposals are antithetical to localism.

1. Strict Captioning Standards Endanger Local Programming

The imposition of stringent quality standards on live program captioning¹⁷ represents another significant burden on local programming. TDI's proposed fine of \$8,000 per hour would not be appropriate if levied against broadcasters.¹⁸ In most cases, broadcasters are not responsible for captioning the program. When programming is not locally-produced, broadcasters receive programming, including captions, from video programming providers. Thus, broadcasters should not face heavy penalties when they contract with reputable programming providers.

Moreover, technology is not yet available to television stations to permit compliance with TDI's proposed accuracy standards for live captioning and the Commission should not assume that Automated Voice Recognition technologies will ease the alleged captioning void if ENT is

¹⁶ *Smith Geiger Study* at 13-14.

¹⁷ *Captioning Order* at ¶15 (the Commission proposed an accuracy rate of 99.8% for pre-produced and 97% for live shows).

¹⁸ *Captioning Order* at ¶37.

discontinued. Voice recognition software systems cannot caption with the level of accuracy sought by the deaf community.¹⁹ No software companies have a solution capable of captioning English, live, with multiple speakers and ambient noise. Computer Prompting and Captioning Co. developed a system using automated recognition but it is not suitable for a multi-speaker environment.²⁰

The impossibility of meeting stringent accuracy standards for live captioning is demonstrated by the FCC itself. As part of its efforts to achieve open access for its processes, the Commission provides live, captioned coverage of its open meetings.²¹ Presumably, the FCC obtains the best available captioning services for its open meetings. Attached hereto as Exhibit A, is a copy of the Commission's opening meeting on October 31, 2005, downloaded from the Commission's website on November 2, 2005.²² As shown in that recording, during a little less than one hour, captioning errors included at least 200 instances of omitted text, 40 instances of incorrect words and 70 misspelled words. Also, complete sentences were omitted several

¹⁹ See e.g., Ingrid Ahmer, *Automatic Speech Recognition for Closed Captioning of Television Data and Issues*, Thesis, Institute for Telecom Research (March 2002) (reported broadcast experiment studies with word error rates of 10 to 20 percent); see also Chih-Wei Huang, *Automatic Closed Caption Alignment Based on Speech Recognition Transcripts* (2004) (news text that was spoken in a lab environment had a 10 to 17 percent word error rate).

²⁰ Computer Prompting and Captioning Co. ("CPC") Website, available at: <http://www.cpcweb.com/> (CPC uses IBM's ViaVoice software.)

²¹ See e.g. Federal Communications Commission "Section 504 Programs & Activities Accessibility Handbook"; www.fcc.gov/cgb pp. 2, 3, 9, 40.

²² Hard copies of these Comments with electronic copies of the open meeting have been filed with the Commission through the Secretary's office. That meeting may be viewed directly at: <http://www.fcc.gov/realaudio/agendameetings.html>

times.²³ Under TDI's proposed standard, any television station that had broadcast the open meeting provided by the Commission would have been subject to a forfeiture of \$8,000.

Therefore, it would be fundamentally unfair to punish broadcasters for accuracy standards, either for captioning they do not provide directly or for live captioning when the technology is not available to achieve such accuracy. Such forfeitures would be another significant new expense which would result from TDI's proposals.

Moreover, an increased number of captioning complaints as a result of this new forfeiture guideline would create a heavy administrative burden for the Commission. In order to process such a complaint, the Commission would have to review and transcribe the entire program complained of and discern whether errors or omissions exist. The error rate process itself is fairly complex and inherently subjective. The Commission would be forced to devise an error rate system that accounted for variables such as editing for reading speed, the relative 'weight' of captioning errors, regional differences in spelling, or the speed with which captions appear. Such an error rate process invites numerous challenges by broadcasters and other programming providers. Protracted forfeiture battles would delay relief for the deaf and hard of hearing community, impose greater regulatory expenses for broadcasters and consume the Commission's limited resources.

²³ Other examples of errors were the following:

<u>Spoken Words</u>	v.	<u>Captioned Words</u>
circumspect		sir couple
unreasonable		reasonable
humanity		humility

2. Continuing ENT Captioning is Reasonable

Permitting ENT captioning to continue and refraining from captioning quality standards strike a reasonable balance. The accuracy of ENT techniques likely is greater than for live captioning.

ENT, in combination with graphics and other visuals, provides very substantial programming to the hearing impaired during newscasts. ENT reproduces the scripts spoken by news anchors during broadcasts, which necessarily represents the vast majority of substantive news coverage. The only spoken statements of news anchors not captured by ENT generally are unscripted, impromptu banter, which in most cases is not substantive.

ENT also generally misses live interviews or other on-the-spot coverage and the spoken portions of weather segments. However, HBI stations, indeed most stations, routinely offer graphics during weather reports that visually provide the substance of the broadcast content, leaving the value of captioning to be minimal. As for instances of live coverage, the Commission must bow to the reality that live captioning is both too expensive and unreliable to be required. Stations already are required to broadcast visual information about emergency health and safety matters.²⁴ Thus, the public interest does not require more.

3. The Public Interest Harms of TDI's Proposals Outweigh the Gains

The casualties of TDI's proposals, if implemented, likely would be local programs. Local sports and cultural events typically attract few advertising dollars. Indeed, the cost of live

²⁴ 47 C.F.R. §79.2 (Broadcasters must provide "[i]nformation, about a current emergency that is intended to further the protection of life, health, safety, and property" The Commission requires that "critical details" must be broadcast. In its regulations, the Commission lists the following necessary details to be broadcast: emergency areas, evacuation orders, evacuation areas, evacuation routes, approved shelters, property security instructions, road closures and relief assistance.)

captioning for these programs might exceed their revenues. Stations could not be expected to broadcast local high school and college games or cultural events under such circumstances.

The most obvious loss in programming probably would be for charities. Charitable broadcasts, for example, the MDA Telethon, necessarily do not earn revenues for television stations. However, TDI would require the expenses and liabilities of live captioning to attach to them. Economics would dictate that charitable broadcasts would be displaced by movies, sitcoms and other syndicated programs that contain captioning and achieve positive revenues. In these austere times, the Commission should not adopt disincentives to local and charitable programs.

4. The Commission Should Continue Regulations Protecting Localism

In particular, the Commission should continue the 2% floor,²⁵ the \$3 million revenue cap,²⁶ the local non news programming exemption,²⁷ the new network exemption,²⁸ late night broadcasting exemption²⁹ and the undue burden waiver.³⁰

These exemptions benefit small broadcasters and new entrants, in particular, from expending more in captioning than their resources will support. They also permit broadcasters to feature local non-news events (charitable, cultural and sporting events) without captioning costs

²⁵ 47 C.F.R. §79.1(d)(11) (The 2% floor portion of Section 79.1 provides that video programming providers, including broadcast-produced materials, will not be required to pay captioning expenses over 2% of their gross revenues).

²⁶ *Id.* at §79.1(d)(12) (programming providers of channels earning less than \$3 million only have pass through obligations).

²⁷ *Id.* at §79.1(d)(8)(local non news productions with no repeat value or ability to be captioned by ENT are exempt).

²⁸ *Id.* at §79.1(d)(9) (new networks in operation less than four years are exempt).

²⁹ *Id.* at §79.1(d)(5)(late night programming between 2AM and 6AM is exempt, there are special rules for programming spanning multiple time zones).

³⁰ *Id.* at §79.1(d)(2)(no programming provider shall be required to caption where they have petitioned to the Commission and demonstrated that captioning presents an 'undue burden.')

or fines for insufficient accuracy (if an accuracy standard is imposed). The Commission should retain these rules to reflect its concerns with broadcast localism. Each of these rules, along with the retention of ENT, provides justifications for continued local news coverage without an extra burden of captioning costs.

B. Captioning Quality Is the Responsibility of Program Producers

For the vast majority of programming, the captioning obligation falls to program producers. Television stations are required to "pass through" available captioning.³¹ That system has been in place throughout the industry since the inception of closed captioning and it makes good sense because at the production point, the best technical and efficient captioning may be accomplished. Video programming providers have the time, resources, and current responsibility under the Commission's rules for closed captioning. As a result, quality standards are inappropriate for broadcasters and the programming providers must take full responsibility for their captioning.

As would be the case for live captioning, it would be fundamentally unfair to punish broadcasters for the captioning failures of program producers. Indeed, it would be infeasible even to require television stations to pre-screen all programming for captioning accuracy. For example, HBI estimates that such pre-screening would cost at least \$150,000 to \$175,000 at WDIO-TV and KAAL in staffing costs alone, even assuming that an opportunity always exists to pre-screen programming, which may not be the case, particularly with live network feeds. Such costs represent a significant portion of the local news budget of either WDIO-TV or KAAL. In

³¹ Captioning Order at ¶¶ 17-20 (existing 'pass through' rules require programmers to "pass through any captioning they receive that is included with the video programming they distribute so long as the captions do not need to be reformatted."); *see also* 47 C.F.R. §79.1(c).

addition, the staff and technical facilities necessary to correct or supplement captioning probably would add astronomical costs.

HBI supports the concept of applying enforceable captioning quality to programming producers. Placing the same burden on television broadcasters is unwarranted and contrary to the factual record which establishes that such technical ability is not available to television stations generally.

C. Added Procedural Requirements are not Needed to Ensure Compliance

In its Petition, TDI complained about the length of captioning compliant response times.³² In most cases, delays are attributable to the Commission's processes and not to broadcasters. TDI's suggestions would complicate matters, likely leading to further delays.

TDI's request for new forfeiture guidelines should be denied. For the reasons stated above, broadcasters should not be fined for captioning failures of program producers or for errors in live captioning because adequate technology is not available. For essential news and safety information, the Commission already has rules in place to require stations to disseminate emergency information to the hearing impaired in a timely and complete way and the Commission enforces those requirements.³³

The Commission should not impose quarterly certifications of compliance by broadcasters.³⁴ As the Commission knows, and Paperwork Reduction Act establishes,³⁵

³² *TDI Petition* at p. 21.

³³ *See In re Midwest Television, Inc. Licensee of KFMB-TV*, Apparent Liability for Forfeiture, File No. EB-04-TC-061 (rel. February 23, 2005); *see also in re McGraw-Hill Broadcasting Co. Inc. Licensee of KGTV*, File No. EB-04-TC-068 (rel. February 23, 2005).

³⁴ *Id.* at ¶¶ 40-43.

³⁵ The Paperwork Reduction Act, 44 U.S.C. §35 (requires the Commission to get information collection approval from the Office of Management and Budget.).

reporting obligations are an expensive burden. The reporting requirements sought by TDI³⁶ are burdens without proven correlative benefit. Certifying compliance would require broadcasters to screen thousands of hours of tape prior to certification.³⁷

D. The Commission Should Deny the Petition Because
of the DTV Transition Obligation Imposed on Television Broadcasters

The public interest requires that the Commission consider all relevant aspects of the broadcasting industry and not exclusively focus on TDI's narrow positions. Taking the record as a whole, the Commission must deny TDI's requests because of the many burdens already imposed on television stations, including the enormous DTV expenditure obligation.

The Commission should consider the historic transition to digital television broadcasting currently underway. That process was initiated about eight years ago³⁸ and is likely to continue for another three years.³⁹ For example, HBI estimates that the complete conversion from analog to digital operations will cost approximately \$3.5 million for WDIO-TV and \$2 million for KAAL.

Now is not the time to impose additional financial burdens on struggling television broadcasters. They face enormous cost burdens already well known to the Commission at a time of unprecedented competition in the video market place. Imposing the vast new burdens sought by TDI, all of which have doubtful value, is entirely unwarranted.

³⁶ *TDI Petition* at p. 20.

³⁷ For a 24/7 broadcaster, it must review 8,736 hours of tape to ensure pre-certification closed captioning compliance.

³⁸ 47 U.S.C. §309(j)(14)(the 1996 Telecommunications Act set a DTV transition date of December 31, 2006.)

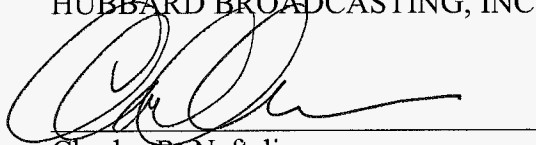
³⁹ *See* note 5, *supra*.

III. Conclusion

Broadcasters remain committed to voluntarily serving the deaf and hard of hearing in their communities. Large new costs and regulatory liabilities probably will only cause a reduction or outright elimination of local news, sports, cultural and charity programming and events. For the foregoing reasons, HBI encourages the Commission to support broadcast localism by retaining captioning exemptions, such as ENT, and refraining from the imposition of greater captioning standards or reporting requirements.

Respectfully submitted,

HUBBARD BROADCASTING, INC.

A handwritten signature in black ink, appearing to be 'C. Naftalin', written over a horizontal line.

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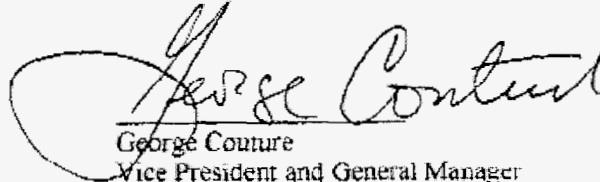
November 10, 2005

Its Attorneys

DECLARATION OF GEORGE COUTURE

I, George Couture, Vice President and General Manager of WDIO-TV, LLC, hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge, information and belief:

1. I have reviewed the foregoing Comments.
2. Except for facts of which official notice may be taken, I have personal knowledge of the allegations of fact contained therein relevant to WDIO-TV, and those allegations of fact are true and correct to the best of my personal knowledge and belief.

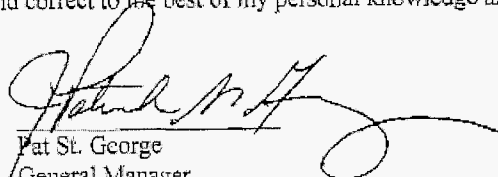

George Couture
Vice President and General Manager
WDIO-TV, LLC

Dated: November 10, 2005

DECLARATION OF PAT ST. GEORGE

I, Pat St. George, General Manager of KAAL-TV, LLC, hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge, information and belief:

1. I have reviewed the foregoing Comments.
2. Except for facts of which official notice may be taken, I have personal knowledge of the allegations of fact contained therein relevant to KAAL(TV), and those allegations of fact are true and correct to the best of my personal knowledge and belief.


Pat St. George
General Manager
KAAL-TV, LLC

Dated: November 10, 2005

Exhibit A

FCC Open Meeting Transmission Copy

Exhibit B

Captioning Costs

The following firms have posted captioning rates, note that these rates are subject to change with variables such as: subject complexity and volume sales.

1. Computer Prompting and Captioning Co.⁴⁰

Roll-up Real Time Captioning: \$100 set up fee/ \$65 each 15 minute event segment (\$260.00 per hour)

2. Aberdeen Captioning⁴¹

Roll-up Real Time Captioning: \$115.00 – \$135.00 per hour (more if the captioning is required for a single event).

3. Caption Colorado⁴²

Roll-up Real Time Captioning: \$120.00 per hour (more if the captioning is only required for a single event).

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⁴⁰ Computer Prompting and Captioning Co., Firm Website, information available at: <http://www.cpcweb.com>.

⁴¹ Aberdeen Captioning, Firm Website, information available at: <http://www.abercap.com>.

⁴² Caption Colorado, Firm Website, information available at: <http://www.captioncolorado.com/about/>.